

IN THE COURT OF APPEALS OF THE STATE OF MISSISSIPPI

NO. 2016-WC-00465-COA

MARY A. LEE

APPELLANT / CLAIMANT

VS

BON WORTH, INC.

APPELLEE / EMPLOYER

VS

TWIN CITY FIRE INSURANCE COMPANY

APPELLEE / CARRIER

**APPELLANT'S RESPONSE TO MOTION TO DISMISS
INTERLOCUTORY APPEAL
AND RULE 27(b)8 MOTION TO STAY BRIEFING**

Prepared by:

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ATTORNEY FOR APPELLANT

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COMES NOW, Claimant Mary A. Lee, Appellant herein, by and through counsel, and responds to Appellees’ *Motion to Dismiss Interlocutory Appeal* and Appellees’ *Rule 27(b)8 Motion to Stay Briefing*, and shows the following in support:

1. Attached hereto are the following exhibits in support of Appellant’s Response to Motion to Dismiss Interlocutory Appeal and Rule 27(b)8 Motion to Stay Briefing:
 - a. Exhibit A – *Order of the Administrative Judge*;
 - b. Exhibit B – *Full Commission Order*;
 - c. Exhibit C – Email correspondence between counsel for Appellant and Appellee;
 - d. Exhibit D – *Notice of Appeal*; and
 - e. Exhibit E – *Employer and Carrier’s Petition for Review of Decision of Administrative Judge*.
2. On March 12, 2015, Mrs. Lee testified at a “hearing on the merits” at the Lee County Justice Center, in Tupelo, Mississippi. See **Exhibit “A”**

3. On June 8, 2015 the *Order of the Administrative Judge* was published. **Id.**
4. Of course Bon Worth, Inc. and Twin City Fire Insurance (hereinafter “Appellees”) treated the *Order of the Administrative Judge* as a final decision when they filed *Employer and Carrier’s Petition for Review of Decision of Administrative Judge*. See **Exhibit “E”**
5. According to Appellee’s *Motion to Dismiss Interlocutory Appeal* and the **Bullock** case repeatedly cited in their motion, the term “award” is indicative of a final decision in workers’ compensation cases. **Bullock vs. AIU Ins. Co.** 995 So.2d 717 (Miss.2008).
6. The Appellees numerous uses of the term “award” in its *Employer and Carrier’s Petition for Review of Decision of Administrative Judge* is very telling of Appellee’s view of the *Order of the Administrative Judge* as a final decision. **Id.**
7. On March 9, 2016, the *Full Commission Order* was published in this case. See **Exhibit “B”**
8. The *Full Commission Order* does not remand Mrs. Lee’s case to the Administrative Judge nor does it cite further issues to be determined in Mrs. Lee’s case, because the Full Commission’s decision killed Mrs. Lee’s workers’ compensation claim. **Id.**
9. Since March 9, 2016, Appellees have treated the Full Commission’s decision as a final order. See **Exhibit “C”**
10. Appellees immediately suspended Mrs. Lee’s indemnity benefits after receiving the *Full Commission Order*. **Id.**
11. Mrs. Lee’s *Notice of Appeal* of the *Full Commission Order* was filed on March 21, 2016. See **Exhibit “D”**
12. The Mississippi Workers’ Compensation Commission did not deny Mrs. Lee’s appeal

13. Furthermore, Appellees did not object to Mrs. Lee's *Notice of Appeal* nor did Appellee's argue that the *Full Commission Order* was not a final decision.
14. Instead, Appellees have waited thirty-eight (38) days from the date Mrs. Lee's *Notice of Appeal* was filed to argue that this matter is an "interlocutory appeal."
15. Another way of viewing Appellees' untimely *Motion to Dismiss Interlocutory Appeal* is that they waited fourteen (14) days before Appellee's Brief is due.
16. Appellees *Motion to Dismiss Interlocutory Appeal* should be denied because the case law cited does not support Appellee's motion.
17. The **Bullock** case the Appellees repeatedly cited is a case whose subject matter is determining when a Claimant is allowed to file a "bad faith" action against an employer and carrier in a workers' compensation case. **Bullock** 995 So.2d 717.
18. Additionally, Appellees should be estopped from seeking dismissal of this appeal as interlocutory.
19. Appellees *Motion to Dismiss Interlocutory Appeal* was untimely filed; Mrs. Lee and her counsel relied on Appellee's treatment of the *Full Commission Order* as a final decision in determining whether to file her *Notice of Appeal*.
- This Court should apply the same rationale used previously determining that affirmative defenses untimely plead are waived. See **MS Credit Center, Inc. v. Horton**, 926 So.2d 167 (Miss. 2006) citing **Cox v. Howard, Weil, Labouisse, Friedrichs, Inc.**, 619 So.2d 908, 913-14 (Miss. 1993); **Univ. Nursing Assocs., PLLC v. Phillips**, 842 So.2d 1270, 1278 (Miss. 2003).
20. For the above state reasons Appellee's *Rule 27(b)8 Motion to Stay Briefing* should be denied.

WHEREFORE, PREMISES CONSIDERED, Appellant Mary A. Lee prays for the following relief:

- a. Denial of *Appellant's Motion to Dismiss Interlocutory Appeal*;
- b. Denial of Appellees' *Rule 27(b)8 Motion to Stay Briefing*; and
- c. Any other relief deemed appropriate and necessary.

Respectfully submitted this the 28th day of April, 2016.

/s/ Ned McDonald III

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CERTIFICATE OF SERVICE

I, Ned McDonald III, certify that I have this day served a true and correct copy of the above and foregoing *Response to Motion to Dismiss Interlocutory Appeal and Rule 27(b)8 Motion to Stay Briefing* via electronic mail to the following:

J. Andrew Faggert
Amy Topik
Markow Walker
P.O. Drawer 50
Oxford, MS 38655-0050

This the 28th day of April, 2016.

/s/ Ned McDonald III

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